In the High Court of Judicature at Madras

Dated: 03/03/2003

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The Honourable Mr.Justice R. Jayasimha Babu
and
The Honourable Mr. Justice N.V. Balasubramanian

Writ Appeal No.1622 of 1998
and
C.M.P.No.6514 of 2002

The General Manager,
Vigilance and Security,
Air India Security Department,
Old Airport, Santa Cruz,
Kalina, Mumbai - 400 029 ..... Appellant

-Vs-

1. S. Joseph Xavier
2. K. Ganesan
3. V. Srinivasan
4. R. Sreenivasagan
5. R. Rajendra Prasad
6. R. Thirunavukkarasu
7. G. Rajendran
8. Narasimhan
9. R.C. Balachandran
10. Venkateswaralu

11. The Seniority Security Manager,
Old Airport, Meenambakkam,
Chennai 600 027 ..... Respondents

Appeal against the order of the Honourable Mr.Justice K.Sampath dated 26.10.1998 made in W.P.No.6727 of 1998 on the file of this Court.

!For appellants : Mrs. Rita Chandrasekaran for
M/s. Aiyar & Dolia

^For respondents : Mr. S. Periasamy

For 11th respondent : No appearance

:O R D E R

(Order of the Court was made by R. Jayasimha Babu,J)

The appellant is the Air India, a statutory body. It has among it's permanent employees Security Guards. It also employs on contract basis for short periods, other security guards chosen from among those sponsored by the Sainik Boards which are concerned with the welfare of the Ex-servicemen. The respondents are persons who had been so sponsored by the Sainik Board and who had been appointed as Security Guards on a temporary basis for the specified period under appointment orders issued on various dates in the years 1997 and 1998. After the expiry of the period of their initial appointment after a gap of about three months, they were again appointed for a limited duration of six months.

2. It was during the currency of the second spell of this appointment, they approached this Court seeking relief of regularisation of the service and their absorption in the service of the appellant as permanent employees.

3. The learned single Judge has granted the prayer by relying on a notification dated December 9, 1976 issued by the Central Government under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 which inter alia prohibited the employment of contract labour for sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments in respect of which the appropriate Government under the Act was the Central Government. The learned single Judge held that it was impermissible for the appellant to employ persons like the respondents as contract labourers to do works for the performance of which the employment of contract labour had been prohibited. Reliance was placed on the decision of the Supreme Court in the case of Air India Statutory Corporation Vs. United Labour Union (AIR 1997 S.C. 645), in which, the same notification was referred to and was construed as entitling the employees who were in employment as on the date of the issue of notification to permanent absorption in the employment of the appellant.

4. That judgment of the Apex Court was considered by a larger Bench of the Supreme Court in the case of SAIL Vs., National Union of Water Front Workers (2001-II L.L.J.1087). The Constitution Bench, after considering the notification of December 9, 1976 in the light of the provisions of the Contract Labour (Regulation and Abolition) Act, 197 0, held that that notification was unsustainable. At paragraph 49 of the judgment, after referring to that notification and the relevant provisions of the Act, the Court observed,

"This is ex facie contrary to the postulates of Section 10 of the Act. Besides it also exhibits non-application of mind by the Central Government. We are therefore, unable to sustain the said impugned notification dated December 9, 1976 issued by the Central Government."

5. The Constitution Bench at paragraph 83 held thus:
"In the light of the above discussion we are unable to perceive in Section 10 any implicit requirement of automatic absorption of contract labour by the principal employer in the concerned establishment on issuance of notification by the appropriate Government under Section 10(1) prohibiting

employment of contract labour in a given establishment."

6. The notification and ruling of the Apex Court which forms the foundation of the relief granted by the Learned single Judge , therefore, are no longer available to the petitioners to rely upon.

7. Learned counsel for the respondents, however, submitted that having regard to the decision of the Apex Court in the cases of Vijay Paul Sharma Vs. Delhi Administration (1992) 4 SCC 114) and Niadar Vs. Delhi Administration (1992) 4 SCC 112), persons who have put in more than one year service are entitled to be regularised. In those cases, the Court was concerned with a large number of casual workmen employed by the Delhi Administration. The Court directed that Administration to formulate a scheme for the absorption of such casual workmen and to provide them regular wages.

8. The position here is altogether different. The appellant Corporation has it's own security personnel permanently employed by it. The petitioners have not been engaged to fill in the vacancies in those permanent posts. The reason for their appointment on a temporary basis for short spell has been explained in the counter-affidavit filed on behalf of the respondent's Senior Manager, HRD. He has stated that the Corporation takes recourse to temporary recruitment of ExServicemen for being appointed as Watchman, such recruitment being done through the Sainik Board, and that the candidates so recruited for temporary spells are not subjected to endurance test. They were also not subjected to medical examination with the same rigour as those who are to be appointed to permanent post. The respondents before the Court, it has been said in the counter, have been recruited on that basis and that they have no right whatsoever to claim absorption on a permanent basis in the services of the appellant.

9. It has been further stated that the Corporation has been considering the contracting out of the provision of security services for the purpose of frisking of passengers, checking of incoming and outgoing cargo, regulating movement of vehicles, goods, employees and visitors, and assisting in the screening of passenger baggages at the airport and of cargo in the warehouse and flight kitchen duties. Those functions, it has been said in the counter, were segregated from the other functions to be handled by the Security Guards, the other functions being those required to be performed by the permanent Security Guards in the employment of the Corporation.

10. It is also stated in the counter that the Corporation has a subsidiary company - Air India Charters Limited, which has been provided security coverage even to foreign airlines at the Mumbai area and that subsidiary company will provide the security services to the appellant Corporation.

11. As there is no prohibition against contracting out of security services, the mere fact that security services are required on a permanent basis does not come in the way of that function being contracted out. It is not an essential requirement of the law that before a service can be

contracted out, it must be found that the need for such service is only temporary, and not a continuing one. Under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, the appropriate Government is empowered to prohibit the employment of contract labour and an attempt at such prohibition was in fact, made in so far as the employment in the areas covered in the notification of 1976 referred to earlier, but that notification has been found to be not one issued in accordance with the Act and has been declared to be of no effect by the decision of the Constitution Bench of the Apex Court in the case of Sail (2001-II L.L.J.1087) (supra).

12. It is, therefore, open to the appellant to employ contract labour for the purpose of providing security services. Appellants having stepped into the portals of the appellant Corporation as temporary Guards, cannot merely on the strength of such initial entry claim a right of permanent retention as security Guards.

13. Questions of contracting out and other matters did not arise for consideration in the cases pertinent to the Delhi Administration on which counsel for the respondent placed reliance. Those decisions are not of any assistance to the workmen in this case.

14. It has also been brought to our notice that some of the petitioners had filed a writ petition earlier and that writ petition had been dismissed as early as 13th November, 1997. In the impugned order of the learned single Judge, we find no reference to that earlier petition of the petitioners, apparently on account of the fact that it had not been disclosed by concerned petitioners, a conduct which must be strongly disapproved.

15. The appeal is allowed. The writ petition filed by the respondents shall stand dismissed. Consequently, C.M.P.No. 6796 of 1999 is closed.

Index: Yes

Btr/

To
1. The General Manager,
Vigilance and Security,
Air India Security Department,
Old Airport, Santa Cruz,
Kalina, Mumbai - 400 029

2. The Seniority Security Manager,
Old Airport, Meenambakkam,
Chennai - 600 027

3. The Senior Manager,

Human Resources Development,
Air India, HRD Department, ASO Complex,
Old Airport, Meenambakkam, Chennai - 17